

**SENSITIVE**

FEDERAL ELECTION COMMISSION  
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FEDERAL ELECTION COMMISSION

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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6849  
DATE COMPLAINT FILED: June 27, 2014  
DATE OF NOTIFICATION: July 3, 2014  
LAST RESPONSE RECEIVED: August 19, 2014  
ACTIVATED: January 13, 2015

EARLIEST SOL: January 29, 2019  
LATEST SOL: July 13, 2019  
ELECTION CYCLE: 2014

**COMPLAINANT:**

Jane A. Deterding

**RESPONDENTS:**

Todd Tiaht  
Kansans for Tiaht and George Bruce  
in his official capacity as treasurer  
Kansans for Responsible Government  
and Willis "Wink" Hartman in his official capacity  
as treasurer  
Hartman Oil Company, Inc.  
Willis "Wink" Hartman  
Michael O'Donnell  
PostNet  
Jim Anderson

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)  
52 U.S.C. § 30116  
52 U.S.C. § 30116(a)  
52 U.S.C. § 30118  
52 U.S.C. § 30120  
11 C.F.R. § 109.20  
11 C.F.R. § 109.21  
11 C.F.R. § 109.23(a)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint involves allegations that an independent expenditure-only political committee ("IEOPC"), Kansans for Responsible Government ("KRG"), and individuals and entities associated with KRG made excessive or prohibited in-kind contributions to federal

1 candidate Todd Tiahrt by coordinating with Tiahrt. As evidence of coordination, the Complaint  
2 lists a number of "connections" between Tiahrt and his principal campaign committee, Kansans  
3 for Tiahrt and George Bruce in his official capacity as treasurer (the "Tiahrt Committee"), on the  
4 one hand, and KRG and its treasurer Willis "Wink" Hartman ("Hartman"), and a variety of  
5 individuals and entities connected to KRG, on the other hand. Respondents deny the  
6 coordination allegations, asserting that the alleged connections are insubstantial or unsupported  
7 and do not constitute coordination.

8 The Complaint also alleges that: (1) KRG republished Tiahrt Committee campaign  
9 materials; (2) an employee of a company owned by Hartman republished a Tiahrt Committee  
10 communication through Twitter; and (3) KRG failed to disclose expenditures for a poll.  
11 Respondents deny the reporting and republication allegations.

12 The available information does not support a finding that there is reason to believe that  
13 Respondents violated the Act in connection with any of these allegations.

14 Finally, the Complaint alleges that KRG failed to include a full disclaimer on a radio  
15 advertisement supporting Tiahrt, and it appears that KRG did include only a partial disclaimer on  
16 the advertisement in question. Because the advertisement included a partial disclaimer, we  
17 recommend the Commission dismiss the violation of 52 U.S.C. § 30120(a), issue a caution, and  
18 close the file.<sup>1</sup>

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<sup>1</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

On May 29, 2014, Todd Tiahrt announced his candidacy for the 4<sup>th</sup> Congressional District of Kansas.<sup>2</sup> On June 5, 2014, Tiahrt filed a Statement of Candidacy and the Tiahrt Committee filed its Statement of Organization.<sup>3</sup> Tiahrt also serves as National Committeeman of Kansas for the Republican National Committee, a post he has held since January 2011.<sup>4</sup>

KRG registered as an IEOPC on May 13, 2014, and Hartman is its treasurer. Hartman ran unsuccessfully for Congress in 2010 against Mike Pompeo, Tiahrt's opponent in 2014. During 2014, KRG received contributions of \$295,130, of which \$285,000 came from Hartman, and made \$266,155 in independent expenditures, all of which supported Tiahrt or opposed Mike Pompeo, Tiahrt's primary opponent.<sup>5</sup>

Hartman is also the president of Hartman Oil, and Michael O'Donnell is its communications director. O'Donnell also served as communications director for Hartman's 2010 unsuccessful campaign. O'Donnell has been a Kansas State Senator since January 2013.<sup>6</sup>

PostNet is a franchised business in Wichita that offers mailbox rentals and other services, including copying, printing, and shipping.<sup>7</sup> Jim Anderson owns and operates PostNet.<sup>8</sup> Both

<sup>2</sup> Compl., Ex. 6 (Letter, Todd Tiahrt for Congress). Todd Tiahrt was the United States Representative for Kansas' 4<sup>th</sup> Congressional district from 1995 to 2011. Tiahrt ran unsuccessfully in 2010 for the United States Senate.

<sup>3</sup> Tiahrt was defeated by incumbent Mike Pompeo in the August 5, 2014, Republican primary election.

<sup>4</sup> See <https://gop.com/leaders/national-committeeman-todd-tiahrt-ks>.

<sup>5</sup> See KRG's 24/48 hour Independent Expenditure Reports (Schedule Es) dated June 3, 21, and 27 and July 10, 11, 18, 24, and 31, 2014.

<sup>6</sup> See [http://www.kslegislature.org/li/b2015\\_16/members/sen\\_o\\_donnell\\_michael\\_1/](http://www.kslegislature.org/li/b2015_16/members/sen_o_donnell_michael_1/).

<sup>7</sup> See <https://www.linkedin.com/pub/jim-anderson/1b/732/127>. PostNet Business Centers are a franchise of PostNet International Franchise Corporation. <http://www.postnet.com/wichita-ks104>.

<sup>8</sup> *Id.*

1 KRG and the Tiahrt Committee have used its services. KRG rents a mailbox from PostNet, and  
2 that box is its official address. The Tiahrt Committee's disclosure reports show disbursements to  
3 PostNet for copying, printing, flyers, palm cards, and signs.<sup>9</sup>

4 **B. Coordination**

5 The Complaint alleges that KRG, Hartman Oil, Hartman, O'Donnell, PostNet, and  
6 Anderson, each made in-kind contributions to the Tiahrt Committee by coordinating activity  
7 with Tiahrt's campaign. In response, Respondents argue that many of the alleged facts are false  
8 or misleading, and that other alleged facts, while true, do not constitute coordination.<sup>10</sup> As  
9 discussed below, we conclude that the available information does not provide enough  
10 information to find reason to believe that any of the Respondents coordinated their activity with  
11 the Tiahrt Committee.

12 Under the Act, an expenditure made by any person in cooperation, consultation, or  
13 concert with, or at the request or suggestion of, a candidate, his authorized political committees,  
14 or their agents, is considered a contribution to such candidate.<sup>11</sup> Communications that are paid  
15 for by a third party, but coordinated with a candidate, are also in-kind contributions to the  
16 candidate.<sup>12</sup> A communication is coordinated if it: (1) is paid for by a person other than the  
17 candidate or candidate's committee; (2) satisfies one or more of the four content standards set

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<sup>9</sup> See KRG's 2014 July Quarterly, 2014 12-Day Pre-Primary, and 2014 October Quarterly reports..

<sup>10</sup> Three Responses to the Complaint were submitted: (1) Tiahrt submitted a joint Response on behalf of himself and the Tiahrt Committee, (2) KRG, Hartman, and O'Donnell submitted a joint Response, and (3) Jim Anderson and PostNet submitted a joint Response.

<sup>11</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

<sup>12</sup> 11 C.F.R. § 109.20.

1 forth at 11 C.F.R. § 109.21(c);<sup>13</sup> and (3) satisfies one or more of the six conduct standards set  
2 forth at 11 C.F.R. § 109.21(d).<sup>14</sup>

3 The candidate must report a coordinated contribution as both a contribution received and  
4 as an expenditure.<sup>15</sup> Corporations, such as Hartman Oil and PostNet, and IEOPCs, such as KRG,  
5 are prohibited from making direct or in-kind contributions to federal candidates.<sup>16</sup> Further, as  
6 corporate officers, Hartman, O'Donnell, and Anderson are prohibited from consenting to any  
7 contribution or expenditure by the corporation,<sup>17</sup> and as individuals, they may not contribute  
8 more than \$2,600 per candidate per election.<sup>18</sup> Federal candidates and their authorized  
9 committees may not knowingly accept an excessive or prohibited contribution.<sup>19</sup>

<sup>13</sup> The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication, in relevant part, that refers to a clearly identified House or Senate candidate, and is publicly distributed or disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the candidate's primary election; or (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c)(1)-(5). The term "public communication" encompasses broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank, or any other form of general public political advertising, and excludes communications over the internet, except for communications placed for a fee on another person's web site. *Id.* § 100.26.

<sup>14</sup> The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. *Id.* § 109.21(d).

<sup>15</sup> 11 C.F.R. §§ 109.20(b) and 109.21(b).

<sup>16</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a); see Advisory Opinion 2010-11 (Commonsense Ten); see also FEC Press Release (Oct. 9, 2014), [http://www.fec.gov/press/press2014/news\\_releases/20141009release.shtml](http://www.fec.gov/press/press2014/news_releases/20141009release.shtml); FEC Agenda Document 14-53-A, Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (Oct. 8, 2014), [http://www.fec.gov/agenda/2014/documents/mtgdoc\\_14-53-a.pdf](http://www.fec.gov/agenda/2014/documents/mtgdoc_14-53-a.pdf).

<sup>17</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a).

<sup>18</sup> 52 U.S.C. § 30116(a)(1)(A). The limit on contributions made by persons to candidates was \$2,600 in 2014. [http://www.fec.gov/pages/brochures/contributions\\_brochure.pdf#search=contribution%20limits%202014](http://www.fec.gov/pages/brochures/contributions_brochure.pdf#search=contribution%20limits%202014)

<sup>19</sup> 52 U.S.C. §§ 30118(a) and 30116(f).

1                   **1.       Radio Advertisement and Related Claims**

2               KRG ran a radio advertisement in support of Tiahrt in June 2014.<sup>20</sup> The Complaint  
3 alleges that KRG coordinated its radio advertisement with the Tiahrt Committee.<sup>21</sup> The  
4 Complaint asserts — and the facts support — that KRG paid for the advertisement and the  
5 advertisement meets the content standard.<sup>22</sup> However, the record does not provide a basis to  
6 conclude that the conduct prong has been met.

7               First, the Complaint argues that the advertisement meets the “request or suggestion” and  
8 “material involvement” conduct standards because Hartman and O'Donnell were acting as  
9 agents of Tiahrt or his committee in connection with the advertisement; the Complaint  
10 specifically asserts that Hartman authorized the disbursements, production and dissemination for  
11 the advertisement and O'Donnell bought airtime on Tiahrt's behalf prior to Tiahrt announcing  
12 his candidacy, in order to disseminate the advertisement.<sup>23</sup> The available information, however,  
13 does not establish that Hartman or O'Donnell had actual authority, either express or implied,<sup>24</sup> to  
14 act on behalf of Tiahrt or the Committee. Nor is there information that Tiahrt or his committee  
15 themselves requested, suggested, or were materially involved in the making of KRG's

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<sup>20</sup> KRG reported making a \$15,500 independent expenditure on June 2, 2014, apparently for the radio advertisement supporting Tiahrt. *See* KRG's 2014 July Quarterly Report, 48 Hour Report of Independent Expenditures (Schedule E), dated June 3, 2014.

<sup>21</sup> Compl. at 1, 5-8.

<sup>22</sup> KRG reported the radio advertisement as an independent expenditure in support of Tiahrt. The advertisement is a public communication that expressly advocates the election of Tiahrt, a clearly identified candidate for federal office. 11 C.F.R. § 109.21(c)(3).

<sup>23</sup> Compl. at 6.

<sup>24</sup> The Commission has defined “agent” in regulations addressing coordinated and independent expenditures as “any person who has actual authority, either express or implied” to request, make, be materially involved in decisions regarding the production or distribution of certain types of communications. The Commission has explained that “actual authority is created by manifestations of consent (express or implied) made by the principal to the agent.” 11 C.F.R. § 109.3(b). *See* Definition of “Agent” for BCRA Regulations on Non-Federal funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4976, 4978 (Jan. 31, 2006).

1 advertisement.<sup>25</sup> In particular, there is no information before the Commission demonstrating that  
2 there were any discussions whatsoever between KRG and Tiahrt about Tiahrt's plans, projects,  
3 activities, or needs, or that the information conveyed was material to the creation, production, or  
4 distribution of KRG's radio advertisement.<sup>26</sup> Additionally, both the Tiahrt Committee and KRG  
5 directly deny the allegations regarding when broadcast spots were reserved and by whom.<sup>27</sup>

6 Similarly, the available information does not provide adequate support for the allegations  
7 that the advertisement's timing and its similarity to Tiahrt's own campaign messages  
8 demonstrate that KRG and the Committee "coordinated themes and messages" or that KRG  
9 republished Tiahrt campaign materials.<sup>28</sup> To support these allegations, the Complaint provides a  
10 chart showing similarities between the content of KRG's advertisement and selected portions of  
11 the Tiahrt Committee's website.<sup>29</sup> Respondents, however, argue that the radio advertisement  
12 does not copy or repeat verbatim the website's content and instead reflects KRG's own message  
13 based on national issues or themes expected to be presented in a Republican primary in Kansas.<sup>30</sup>

14 Although there are similarities in the themes and words used in the Tiahrt campaign  
15 website and the radio advertisement, under the circumstances presented here, such similarity  
16 does not on its own sufficiently show that the content of the radio advertisement was coordinated.  
17 Because the information on Tiahrt's website was publicly available, KRG did not necessarily

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<sup>25</sup> 11 C.F.R. § 109.3(b).

<sup>26</sup> *Id.* § 109.21(d)(3).

<sup>27</sup> KRG denies the allegations that it reserved broadcast spots before Tiahrt announced his candidacy, asserting that its internal records show that its radio advertisement was created the same day Tiahrt announced his candidacy, not before. KRG Resp. at 7. Similarly, Tiahrt denies that O'Donnell reserved broadcast spots on behalf of the Tiahrt Committee, noting that the Committee secured its own broadcast spots on July 2, 2014, as shown on its FCC filings. Tiahrt Resp. ¶ 15.

<sup>28</sup> Compl. at 7.

<sup>29</sup> Compl. at 5 and ¶ 18.

<sup>30</sup> KRG Resp. ¶ 18; Tiahrt Resp. at 18.

1 need to discuss its own advertisement with Tiahrt in order to include similar themes in its own  
2 advertisement and thus, absent other information, the similarities alone do not sufficiently  
3 establish that the conduct prong is met. Further, the wording of the KRG advertisement<sup>31</sup> varies  
4 in its words and phrasing such that the similarities "do not appear to rise to a level sufficient to  
5 indicate republication of campaign materials."<sup>32</sup>

6 **2. Fundraiser for Tiahrt**

7  
8 On June 2, 2014, Hartman apparently emailed an unknown number of people an  
9 invitation to a fundraiser for Tiahrt held at Chester's Chophouse & Wine Bar, a restaurant in  
10 which Hartman has a majority ownership stake.<sup>33</sup> The Complaint appears to allege that this  
11 invitation, as well as Hartman's part ownership of the fundraiser's venue, establishes  
12 coordination between KRG and Tiahrt.<sup>34</sup> The email has a subject line "Todd Tiahrt" and states:  
13 "Please join the Todd Tiahrt at Chester's and hear his vision going forward. Let's return  
14 leadership to the log jam in Washington. It is time we have a real conservative that understands  
15 the Constitution and People Rights."<sup>35</sup> Below Hartman's signature the email notes that the  
16 fundraiser is for "Fourth Congressional District Candidate, Todd Tiahrt," and provides the name  
17 (Chester's Chophouse & Wine Bar), location, phone number, date and time for the event.<sup>36</sup>

<sup>31</sup> See Compl. ¶ 18 (comparing words or phrases from website to KRG advertisement *e.g.*, "Character Counts" to "The Candidate we can trust.>").

<sup>32</sup> 52 U.S.C. § 30116(a)(7)(B)(iii), 11 C.F.R. § 109.23(a), *infra.* at 15. See, *e.g.*, First Gen. Counsel's Rpt. at 11, 12, MUR 6037 (Jeff Merkley for Oregon). See also; MUR 2766 (Auto Dealers and Drivers for Free Trade PAC) (similar sentences used in two campaigns do not rise to the level sufficient to indicate republication of campaign materials because of differences in wording and phrasing).

<sup>33</sup> Compl. ¶ 10, Ex. 11.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



1 Tiahrt states that at the event he spoke about his "general disappointment with the state of  
2 affairs" in his district and in America and his reasons for running and denies that the invitation to  
3 the fundraiser constitutes coordination with KRG.<sup>37</sup> KRG notes that the invitation "did not  
4 mention [KRG] or its efforts" and asserts that such an invitation to "personal friends, and  
5 contacts" does not constitute coordination.<sup>38</sup> KRG further asserts that the Complaint does not  
6 explain how Hartman's ownership stake in the restaurant used for the fundraiser meets the test  
7 for concluding there was coordination with KRG.<sup>39</sup>

8 As an IEOPC, KRG may not make any contributions, whether direct or in-kind, to federal  
9 candidates and committees.<sup>40</sup> Hartman is the treasurer and principal of KRG as well as its  
10 primary funder, and KRG appears to solely support Tiahrt.<sup>41</sup> The Complaint appears to suggest  
11 that Hartman's role in emailing the invitation to the fundraiser for Tiahrt and the fundraiser's  
12 location at a restaurant in which Hartman has an ownership interest, raise questions as to whether  
13 the activity resulted in an in-kind contribution from KRG or Hartman to the Tiahrt Committee.  
14 There does not appear to be enough information, however, to suggest that KRG or Hartman, as  
15 an agent of KRG, had any role in the fundraiser as a result of cooperation, consultation or

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<sup>37</sup> Tiahrt Resp. ¶ 10.

<sup>38</sup> KRG Resp. ¶ 10. It appears that Hartman sent the email from his corporate email address at Hartman Oil. While the use of a corporate email to invite persons to a fundraiser for a federal candidate may under some circumstances result in corporate facilitation, we do not have enough information to determine whether those circumstances may have been present here. 11 C.F.R. § 114.2(f)(2). We do not know whether the recipients of the email were limited to Hartman Oil's restricted class, though the reference to the term "personal friends and contacts" suggests that some recipients were outside the class. *Id.* Even if the use of the corporate email could be deemed facilitation, the current record would only show a *de minimis* use of corporate resources that would not justify any enforcement action, and there is nothing to suggest Hartman or Hartman Oil collected and forwarded checks to Tiahrt. *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> See KRG's Statement of Organization, dated May 7, 2014, *see also supra* note 16.

<sup>41</sup> See *supra*, note 5.

1 concert with, or at the request or suggestion of Tiahrt or the Tiahrt Committee.<sup>42</sup> In particular, it  
2 does not appear that either KRG or Hartman held or sponsored this fundraiser, nor is there any  
3 information that Hartman had any discussions with Tiahrt or the Committee in connection with  
4 the fundraiser or the invitation, despite Hartman's part ownership of the event venue. Indeed, the  
5 fundraiser appears to have been paid for by the Tiahrt Committee — the committee's disclosure  
6 reports show that on June 30, 2014, the Tiahrt Committee made a \$952.75 disbursement to the  
7 restaurant, for "Fundraiser – food/beverages."<sup>43</sup> In light of these circumstances, Hartman's  
8 emailing of the invitation to the fundraiser is not by itself sufficient to recommend a finding of  
9 coordination or contribution from KRG or Hartman to the Tiahrt Committee, whether direct or  
10 in-kind. Further, the email invitation itself does not meet any of the content standards of the  
11 coordinated communication standard and is therefore not a coordinated communication.<sup>44</sup>

12 **3. Interactions Between Tiahrt, Hartman, and O'Donnell at Party**  
13 **Events**  
14

15 The Complaint also makes a number of allegations that purport to show coordination  
16 between Tiahrt and Hartman, or Tiahrt and O'Donnell, through their interaction at events that  
17 occurred prior to Tiahrt's candidacy. Specifically, the Complaint alleges that Hartman hosted a  
18 reception for Tiahrt during the Kansas Republican Party's Kansas Day Activities in January  
19 2014, more than four months before Tiahrt declared his Congressional candidacy, where  
20 attendees were "led to believe" Tiahrt would run against Pompeo.<sup>45</sup> Respondents assert that the

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<sup>42</sup> See 11 C.F.R. § 109.20.

<sup>43</sup> See Tiahrt Committee's 2014 July Quarterly Report. The date of payment to the restaurant is after the fundraising event. Commission regulations specify that corporate facilitation includes, among other things, fundraising activities such as the provision of catering or food services unless the corporation "receives advance payment for the fair market value of the services." 11 C.F.R. § 114.2(f)(2)(i)(E). However, a business entity search for the restaurant does not show that it is registered as a corporation in the state of Kansas.

<sup>44</sup> See 11 C.F.R. § 109.21(c).

<sup>45</sup> Compl. ¶ 3.

1 reception was not a campaign event but an annual event that Tiahrt attended as National  
2 Committeeman of Kansas for the Republican National Committee.<sup>46</sup> The Complaint also alleges  
3 that in the several weeks leading up to Tiahrt's announcement of candidacy, from April 14, 2014  
4 to May 22, 2014, Hartman Oil employee O'Donnell facilitated Tiahrt's public appearances and  
5 supported Tiahrt's candidacy by accompanying him to five public events.<sup>47</sup> Tiahrt and the  
6 Committee assert that Tiahrt attended these events as National Committeeman of Kansas for the  
7 RNC, the Tiahrt Committee did not exist at the time of these events, and O'Donnell did not  
8 represent the Tiahrt Committee at these events.<sup>48</sup> KRG similarly asserts that O'Donnell is a State  
9 Senator and tries to attend all local Republican Party meetings, especially the ones held in his  
10 district, and that O'Donnell only traveled with Tiahrt to one of these events — the May 5th  
11 Town Hall Meeting, and the two merely carpooled together.<sup>49</sup> Because these events clearly took  
12 place prior to Tiahrt's candidacy, and because the available information does not show that the  
13 events were connected to Tiahrt's subsequent candidacy or that attendees were told or led to  
14 believe Tiahrt would run, these events do not establish coordination in connection with Tiahrt's  
15 federal candidacy.

<sup>46</sup> Tiahrt Resp. at ¶ 3; KRG Resp. ¶ 3. A photograph of the Kansas Day Reception poster states "Welcome to RNC Committeeman Todd & Vicki Tiahrt's Kansas Convention Reception." Compl., Ex. 4.

<sup>47</sup> Specifically, the Complaint alleges that: (1) on April 14, 2014, O'Donnell and Tiahrt arrived together, attended a local Republican Party meeting, and "worked the room" together; (2) on May 3, 2014, O'Donnell accompanied Tiahrt to the "Kansans for Liberty" campaign kick-off event where Tiahrt spoke; (3) on May 5, 2014, O'Donnell and Tiahrt traveled together to a Town Hall Meeting in Winfield, Kansas, and had dinner together after the event; (4) on May 16, 2014, O'Donnell and Tiahrt attended the Wichita Pachyderm meeting, where O'Donnell "asked a strategic question which gave Tiahrt the opening to address campaign issues and themes"; and (5) on May 22, 2014, "Tiahrt and O'Donnell worked the room together at the Sedgwick County Republican Party meeting." Compl. ¶ 16.

<sup>48</sup> Tiahrt Resp. ¶ 16.

<sup>49</sup> *Id.*

1                   **4.       Allegations Regarding Tiahrt's and Hartman's Radio Shows**

2           The Complaint alleges that on June 4, 2014, Hartman expressed support for Tiahrt's  
3   candidacy on his show on local radio station KQAM 1480 AM and noted that the station's  
4   programming included a series of radio shows hosted by Tiahrt ("Tuesdays with Todd") and  
5   Hartman ("Wednesdays with Wink"). Tiahrt and KRG respond that Hartman's statements are  
6   protected under the First Amendment<sup>50</sup> or qualify for the press exemption.<sup>51</sup> The Complaint also  
7   alleges that "reliable information" indicates that O'Donnell, Hartman Oil's Communications  
8   Director, "brokered a deal with KQAM" to set up the talk shows for Tiahrt and Hartman.<sup>52</sup>  
9   Tiahrt asserts that the allegation is unsubstantiated, and that he was invited by the KQAM  
10   General Manager to host a talk show as part of the radio station's new weekly talk show lineup,  
11   and several local business and political leaders also accepted the station's invitation to host  
12   programs.<sup>53</sup> According to KRG, O'Donnell denies having brokered any deal and said he first  
13   learned of the shows a week before Tiahrt and Hartman were scheduled to host their first  
14   shows.<sup>54</sup> KRG also asserts the Complaint does not explain the connection between radio shows  
15   and KRG's radio communications at issue in the Complaint.

16           The fact that Hartman and Tiahrt had radio shows on the same station, or that Hartman  
17   endorsed Tiahrt on his show, does not establish coordination of Tiahrt's campaign activities.  
18   Further, with regard to the allegation that O'Donnell secured Tiahrt's radio show, Respondents  
19   directly deny the Complaint's allegations, and the Complainant does not indicate the source of

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<sup>50</sup>       Tiahrt Resp. ¶ 11.

<sup>51</sup>       KRG Resp. ¶ 11.

<sup>52</sup>       Compl. ¶ 12.

<sup>53</sup>       Tiahrt Resp. ¶ 12.

<sup>54</sup>       KRG Resp. ¶ 12.

her information or explain its purported reliability, or explain the nexus between the inception of the radio shows and Tiahrt's federal campaign.

**5. Alleged Connections between PostNet and Anderson, Tiahrt, the Tiahrt Committee, and KRG**

The Complaint alleges coordination between PostNet, Tiahrt, the Tiahrt Committee, and KRG because:<sup>55</sup> (1) on June 10, 2014, Jim Anderson, owner of PostNet, was a special guest on Tiahrt's radio show during which they discussed the upcoming congressional race;<sup>56</sup> (2) KRG's mailbox at PostNet is its address of record with the Commission; and (3) the Tiahrt Committee sent an email to supporters stating that they could pick up Tiahrt's yard signs at the Committee headquarters and at the PostNet location.<sup>57</sup>

In a joint Response, Anderson and PostNet deny that KRG and PostNet share the same address; they explain that PostNet rents 100 private mailboxes, and the mailboxes are legally separate addresses from PostNet's business address.<sup>58</sup> Anderson acknowledges he was a guest on Hartman's radio show and has been a guest on other similar shows.<sup>59</sup> He asserts, however, that he does not endorse any candidate on the air.<sup>60</sup> Tiahrt states that PostNet provides printing services, and his committee ordered signs from PostNet, an expenditure it disclosed to the Commission.<sup>61</sup> Tiahrt concedes that KRG also rents a mailbox at PostNet, but asserts that this fact does not make PostNet a "common vendor" under the conduct prong. Finally, KRG replies

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<sup>55</sup> Compl. ¶ 14.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* ¶ 14. 21.

<sup>58</sup> PostNet Resp. (Jul. 21, 2014).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Tiahrt Resp. ¶ 21.

1 that PostNet is a franchise similar to Kinkos, and the Complaint does not explain how KRG's  
2 rental of a mailbox, and the direction that Tiahrt Committee volunteers pick up yard signs at  
3 PostNet constitute coordination.<sup>62</sup>

4 The Complaint appears to be alleging that KRG's rental of a mailbox at PostNet and the  
5 printing and distribution of the Tiahrt Committee's yard signs at PostNet, coupled with  
6 Anderson's appearance on Tiahrt's radio show indicate coordination under a "common vendor"  
7 theory pursuant to 11 C.F.R. § 109.21(d)(4). However, these facts do not make PostNet a  
8 "common vendor" under that subsection because KRG, the entity paying for the radio  
9 advertisement, did not use PostNet to create, produce, or distribute the communication.<sup>63</sup> In any  
10 event, none of these facts constitute coordination generally, or coordination in connection with  
11 KRG's radio advertisement.

#### 12 6. Remaining Coordination Allegations

13  
14 Many of the Complaint's remaining allegations are either inaccurate or do not support a  
15 conclusion of coordination. These include allegations that (1) Tiahrt's consulting firm, Todd  
16 Tiahrt, LLC, is located inside Hartman's office suite in the Hartman Oil building,<sup>64</sup> (2) Hartman  
17 made contributions to Tiahrt's unsuccessful 2010 Senatorial campaign; (3) Hartman ran  
18 unsuccessfully for Congress in 2010 against Pompeo, Tiahrt's opponent in 2014; and (4) Zoe  
19 Newton, former general counsel for Hartman Companies, introduced Tiahrt on the day he  
20 announced his candidacy.<sup>65</sup> Respondents assert that Tiahrt moved his business offices from  
21 Hartman Oil's building a year before he announced his candidacy, and Newton left Hartman Oil

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<sup>62</sup> KRG Resp. ¶ 21.

<sup>63</sup> See 11 C.F.R. § 109.21(d)(4)(i). KRG used Strategic Media Services for the radio advertisement.

<sup>64</sup> Compl. ¶ 1 (Jun. 27, 2014).

<sup>65</sup> Compl. ¶ 2.

1 at about the same time Tiahrt's offices moved. They further assert that none of the allegations  
2 demonstrates coordination. We agree with the Respondents' assessment of these claims.

3 **7. Conclusion**

4 Though the record suggests some specific interactions between Tiahrt and individuals  
5 associated with KRG prior to his candidacy, and that once Tiahrt became a candidate, KRG and  
6 Hartman in particular supported that candidacy, the record here does not establish reason to  
7 believe that the parties engaged in activity that would constitute coordination generally or satisfy  
8 the conduct prong of the coordinated communication regulation. Accordingly, we recommend  
9 that the Commission find no reason to believe that Respondents made any in-kind contributions  
10 to the Tiahrt Committee in connection with the activities alleged in the Complaint and no reason  
11 to believe that Kansans for Responsible Government and Willis "Wink" Hartman, in his official  
12 capacity as treasurer made, and Todd Tiahrt and Kansans for Tiahrt knowingly accepted, in-kind  
13 contributions in the form of coordinated communications and failed to disclose these  
14 contributions. Accordingly, we recommend that the Commission find no reason to believe that:  
15 (1) KRG and Hartman violated 52 U.S.C. §§ 30104(b) and 30116(a); (2) the Tiahrt Committee  
16 violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a); (3) Hartman Oil Company and PostNet  
17 violated 52 U.S.C. § 30118(a); (4) Hartman, Michael O'Donnell, and Jim Anderson violated  
18 52 U.S.C. §§ 30116(a) and 30118(a); and (5) Tiahrt violated 52 U.S.C. §§ 30116(f) and  
19 30118(a).

**C. Republication of Campaign Materials**

The Complaint alleges that O'Donnell republished Tiahrt's campaign materials with a "re-tweet" of a communication criticizing Pompeo."<sup>66</sup> The June 4, 2014, re-tweet states: "Bring it on, Tiahrt! I won't monitor your calls, I promise ;)."

Under the Act, the "financing by any person of the dissemination, distribution or republication, in whole or *in part*, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered an expenditure."<sup>67</sup> The republication of campaign materials prepared by a candidate's authorized committee is an in-kind contribution, because the person financing the republication "has provided something of value to the candidate [or] authorized committee."<sup>68</sup>

The Commission has stated that "Congress has addressed republication of campaign materials through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views republication of his or her campaign material, *even in part*, as a benefit" and "can be reasonably construed only as for the purpose of influencing an election."<sup>69</sup> The candidate who prepared the campaign material does not receive or accept an in-kind

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<sup>66</sup> Compl. ¶ 17, Ex. 15.

<sup>67</sup> 52 U.S.C. § 30116(a)(7)(B)(iii) (*emphasis added*). See also 11 C.F.R. § 109.23(a). For republication, the Commission has concluded that "campaign materials" include any material belonging to or emanating from a campaign. See, e.g., MUR 5743 (Betty Sutton) (candidate photo obtained from campaign website); MUR 5672 (Save American Jobs) (video produced and used by candidate's campaign subsequently hosted on association's website).

<sup>68</sup> Explanation and Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) ("2003 Coordination E&J").

<sup>69</sup> *Id.* at 443 (*emphasis added*); see also Explanation and Justification, *Coordinated Communications*, 71 Fed. Reg. 33,190, 33,191 (June 8, 2006) ("2006 Coordination E&J").



1 contribution, and is not required to report an expenditure, unless the dissemination, distribution,  
2 or republication of campaign materials is a coordinated communication.<sup>70</sup>

3 The Commission's regulations set forth an exception to the republication provision when  
4 "the campaign material used consists of a brief quote of materials that demonstrate a candidate's  
5 position as part of a person's expression of its own views."<sup>71</sup> Additionally, the Commission  
6 created an exemption for grassroots activity on the Internet that allows individuals to republish  
7 campaign materials using the Internet without making a contribution or expenditure.<sup>72</sup> This  
8 exception, however, does not exempt from the definition of "contribution" any "public  
9 communication" that involves the republication of such materials.

10 Tiahrt asserts that O'Donnell's re-tweet is a statement from an anonymous Twitter  
11 account called "Congressman Phonetap," the Twitter activity is protected by the First  
12 Amendment, and the public statement does not support the coordination allegation.<sup>73</sup> Similarly,  
13 KRG asserts that the re-tweet does not constitute "coordination as a republication of campaign  
14 materials."<sup>74</sup> The re-tweet does not appear to meet the requirements for republication of  
15 campaign materials. The record does not indicate that the statement originated from any  
16 campaign materials, was coordinated with any candidate, or that there was any cost involved in  
17 obtaining the statement or making it available through Twitter, and in any event, individuals may  
18 republish materials using the internet without making a contribution or expenditure.<sup>75</sup>

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<sup>70</sup> 11 C.F.R. § 109.23(a).

<sup>71</sup> *Id.* § 109.23(b)(4).

<sup>72</sup> See Explanation and Justification, *Internet Communications*, 71 Fed. Reg. 18,589, 18,684 (Apr. 12, 2006);  
see also 11 C.F.R. §§ 100.94, 100.155.

<sup>73</sup> Tiahrt Resp. ¶ 17.

<sup>74</sup> KRG Resp. ¶ 17.

<sup>75</sup> 11 C.F.R. §§ 100.94, 100.155.

1 Accordingly, it does not appear that either O'Donnell personally, or as an agent of Hartman Oil,  
2 made an in-kind contribution to Tiahrt via republication. Thus, we recommend that the  
3 Commission find no reason to believe that Michael O'Donnell violated 52 U.S.C. §§ 30116(a)  
4 and 30118(a), and no reason to believe that Hartman Oil, Inc. violated 52 U.S.C. § 30118(a).

5 **D. Alleged Disclaimer Violation for KRG Radio Advertisement**

6 The Complaint alleges that KRG failed to include its permanent street address, telephone  
7 number, or URL address in the disclaimer of its radio advertisement.<sup>76</sup> The disclaimer states:  
8 "Kansans for Responsible Government is responsible for the content of this advertising. Paid for  
9 by Kansans for Responsible Government and not authorized by any candidate, or candidate's  
10 committee."<sup>77</sup> KRG responds that the Complaint did not provide an actual copy of the  
11 advertisement or a website link, but even if the advertisement lacked the information, the  
12 disclaimer complies with most of the regulatory requirements — it stated that KRG paid for and  
13 was responsible for the advertisement — and the missing information can be found by running a  
14 web search of its name.<sup>78</sup> Thus, KRG requests that the Commission exercise its prosecutorial  
15 discretion to dismiss the allegation under *Heckler v. Chaney*, 470 U.S. 821 (1985).

16 Any public communication, such as KRG's radio advertisement, made by a political  
17 committee must include a disclaimer.<sup>79</sup> If the communication is not authorized by a candidate, a  
18 candidate's authorized political committee, or any agent, the disclaimer must state the name and  
19 street address, telephone number, or World Wide Web address of the person who paid for the

<sup>76</sup> See Compl. ¶ 20, Ex. 17.

<sup>77</sup> *Id.*

<sup>78</sup> KRG Resp. ¶ 20.

<sup>79</sup> 52 U.S.C. § 30120; 11 C.F.R. § 110.11(a)(1).

1 communication and state that the communication is not authorized by any candidate or  
2 candidate's committee.<sup>80</sup>

3 The radio advertisement's disclaimer was incomplete; it lacked the Committee's phone  
4 number, URL address, or street address. The disclaimer did state that KRG paid for the  
5 advertisement and that a candidate did not authorize it. The Commission has dismissed several  
6 disclaimer matters with cautions in similar circumstances, and thus we recommend that the  
7 Commission dismiss with caution the allegation that Kansans for Responsible Government and  
8 Willis Hartman in his official capacity violated 52 U.S.C. § 30120(a).<sup>81</sup>

9 **E. Alleged Failure by KRG to Report Expenditure for Poll**

10 Finally, the Complaint alleges that KRG did not report the expenditure for a "misleading  
11 push poll" conducted after KRG's radio ad campaign.<sup>82</sup> KRG states that its poll was a legitimate  
12 opinion poll, which it properly reported as an expenditure to Twin Oaks Connect on its 2014 Pre-  
13 Primary Report.<sup>83</sup> Indeed, KRG disclosed, on its 2014 Pre-Primary and October Quarterly  
14 Reports, disbursements to Twin Oaks Connect, in the amounts of \$4,419 and \$951 on July 10  
15 and July 23, 2014, respectively, for "marketing services."<sup>84</sup> Because it appears that these  
16 reported disbursements were for the poll in question, we recommend that the Commission find  
17 no reason to believe that Kansans for Responsible Government and Willis "Wink" Hartman, in

<sup>80</sup> 11 C.F.R. § 110.11(b)(3), (d)(3).

<sup>81</sup> In similar situations where there was a failure to include the requisite disclaimer but there was some information identifying the committee, the Commission has dismissed the alleged disclaimer violation and issued a letter of caution. *See, e.g.*, MUR 6683 (Fort Bend County Democratic Party, *et al.*); MUR 6633 (Republican Majority Campaign PAC, *et al.*); MUR 6438 (Arthur B. Robinson, *et al.*); MUR 6270 (Rand Paul Committee, *et al.*); MUR 6278 (Joyce B. Segers, *et al.*).

<sup>82</sup> Compl. ¶ 19, 5, 7. The Complaint also alleges that the poll contained a similar message and theme as the ad campaign and reinforced the Tiahrt Committee's claim that Pompeo supported funding the Affordable Care Act. *Id.* at 5.7.

<sup>83</sup> KRG Resp. ¶ 19.

<sup>84</sup> KRG's 2014 12-Day Pre-Primary Report at 7, and 2014 October Quarterly Report at 9.

his official capacity as treasurer violated 52 U.S.C. §§ 30104(b) by failing to report its disbursements for the poll.

### III. RECOMMENDATIONS

1. Find no reason to believe that Kansans for Responsible Government and Willis Hartman, in his official capacity violated 52 U.S.C. §§ 30104(b) and 30116(a).
2. Find no reason to believe Hartman Oil Company, Inc. violated 52 U.S.C. § 30118(a).
3. Find no reason to believe that Willis Hartman violated 52 U.S.C. §§ 30116(a) and 30118(a).
4. Find no reason to believe that Michael O'Donnell violated 52 U.S.C. §§ 30116(a) and 30118(a).
5. Find no reason to believe that PostNet violated 52 U.S.C. § 30118(a).
6. Find no reason to believe that Jim Anderson violated 52 U.S.C. § 30118(a).
7. Find no reason to believe that Kansans for Tiahrt and George Bruce in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f), and 30118(a).
8. Find no reason to believe that Todd Tiahrt violated 52 U.S.C. § 30116(a) and (f).
9. Dismiss with caution the allegation that Kansans for Responsible Government and Willis Hartman in his official capacity violated 52 U.S.C. § 30120(a).
10. Approve the attached Factual & Legal Analyses.
11. Approve the appropriate letters.

12. Close the file.

5-13-15  
Date

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